

**Consent Agreement
Between the City of Darien
and Commonwealth Edison Company**

RECITALS

Whereas, the City of Darien ("the City") filed a Complaint for Declaratory Judgment, Specific Performance and other Relief entitled "City of Darien v. Commonwealth Edison Company," Lawsuit No. 2005 MR 1183, in the Circuit Court of the 18th Judicial Circuit, DuPage County, Illinois (the "DuPage Lawsuit"), in which it claimed that Commonwealth Edison Company ("ComEd") had failed to provide electrical service as required under the terms of a 1996 Franchise Agreement between them; and

Whereas, the City concurrently initiated an Illinois Commerce Commission complaint with substantially the same allegations entitled the "City of Darien vs. Commonwealth Edison Company," Docket Number 05-0601, ("the ICC Complaint"); and

Whereas, Commonwealth Edison Company ("ComEd") has independently decided to provide compensation in response to reasonable and appropriate claims by ComEd customers as a result of an August 10, 2005 outage caused by a substation fire ("the Fire"); and

Whereas, ComEd believes that it has substantial defenses to both the DuPage Lawsuit and the ICC Complaint; and

Whereas, the parties, without acknowledging the standing of any party, the jurisdiction of any particular forum, and the validity of any argument raised, or without admitting liability of any kind, but cognizant of the expense of further litigation, have agreed to settle and compromise the DuPage Lawsuit and the ICC Complaint as described herein;

Now, therefore, in consideration of the promises and release contained in this Consent Agreement, the City and ComEd do hereby mutually covenant and agree as follows:

TERMS

1. Reliability Initiatives: Verification.

(a) ComEd has proposed to the City, and has already initiated work on, a "Reliability Enhancement Plan," dated August 18, 2005 (the "Plan"). The terms and conditions of the Plan are incorporated herein by reference. ComEd agrees to complete the work identified in the Plan.

(b) ComEd will provide reasonable cooperation with a one-time review of the Plan by an expert of the City's choice. ComEd will reimburse the City in the amount of up to \$20,000 for expenses incurred by the City in retaining an expert who will also advise the City if ComEd has substantially completed the work identified in the Plan. The expert shall timely notify the City when it concludes that the Plan work has been "substantially complete," which shall mean 1) that items scheduled to be complete by December 15,

2005, and 2) those items identified from circuit inspections and customer outage reviews by the date of this Consent Agreement have been completed, except for minor or "punch list" items as are reasonably recognized by the expert.

(c) ComEd commits to complete each item by the date designated in the Plan unless (1) the City agrees to defer, cancel, or delay the item or (2) the item's completion is prevented by a force majeure. In the case of force majeure, the item will be completed in as timely a manner as is reasonably possible, after consultation with the City.

2. **Resolution of Customer Who Seek Compensation.** ComEd has independently decided to provide compensation in response to reasonable and appropriate claims by ComEd customers as a result of the Fire. ComEd has selected an outside firm to assist with the processing of these claims. The parties agree that Darien will not institute any other action on behalf of others for losses or damages related to the substation fire if ComEd completes the claims processing response as stated. Customers may accept offers to resolve their claims or reject those offers and pursue their claims in the appropriate forum; a decision on an individual claim is not subject to challenge under this Consent Agreement.
3. **Resolution of the City's Claims.** ComEd shall process and pay the City for reasonable and appropriate costs specifically attributable to the substation fire, which City has identified will not exceed \$5,000. City's costs shall not include expenses that would normally be provided at no cost to any business operation in the City. Each party shall be responsible for its own costs and attorneys' fees connected with the DuPage Litigation and the ICC Action.
4. **Environmental Data Verification.** Although ComEd provided information to the City about fire air emissions, the parties recognize that the City remains concerned about air emissions from the fire. Within 15 days of the signing of this Consent Agreement, ComEd shall obtain, from the independent entity that performed ComEd's air emissions testing, a summary for the City. In addition, although foam and not water was used to extinguish the substation fire, ComEd shall obtain, from the independent entity that performed ComEd's water tests, a summary of water analysis results from the manhole near the substation.
5. **Periodic Reporting.** ComEd representatives shall periodically appear at future City Council meetings in order to update the Council and residents as to the status of the Plan, and provide a quarterly report. Once the Plan has been substantially completed, no further appearances will be required pursuant to this Consent Agreement.
6. **Binding Agreement.** The City and ComEd each represent to the other that they understand this Consent Agreement is binding within its stated limits and to the applicable period, that they have had the opportunity to consult with counsel or other representatives of their choice, and that they are fully informed of the nature and contents of this Consent Agreement. The City and ComEd each represent to the other that they enter into this Consent Agreement of its own free will without

any threat or coercion whatsoever. The parties understand that this Consent Agreement is a compromise, and that by entering into this Consent Agreement they have elected to accept the certainty of the specified items contained herein in exchange for a release of additional relief that may have been available if the DuPage Litigation and ICC complaint had continued, or a loss of the ability to obtain a ruling on the total denial of relief that was sought.

7. Dismissal of Litigation.

(a) The City and ComEd recognize that most of the ComEd commitments made in this Consent Agreement will be completed within the next 60 days. Accordingly, the parties will cause the ICC complaint and the DuPage Lawsuit to be dismissed, subject to limited jurisdiction to enforce the terms of this Consent Agreement to the extent allowed. Under no circumstances will the City seek to utilize that limited jurisdiction except to obtain specific relief for non-satisfaction of the obligations contained in Paragraphs 1, 3, 4 or 5 above, and shall not use the Plan obligations as a basis for utilizing the limited jurisdiction once the Plan is determined to be substantially complete by its expert. The Court's limited jurisdiction shall, in any event, expire two (2) years from the date of acceptance.

(b) ComEd's entry into a stipulated dismissal and any limited retention of jurisdiction by the court handling the DuPage Lawsuit does not constitute a waiver by ComEd of its future opportunity to challenge the standing to assert these claims in state court, or the jurisdiction of a state court to hear the underlying claims. However, ComEd will not object to the Court's limited jurisdiction to enforce this Consent Agreement by its terms.

8. **Cooperation.** The City and ComEd agree to collaborate on any public statements issued by either party related to the subject matter of this Consent Agreement to the extent reasonably possible or necessary. This in no way shall be construed to limit the City's ability to comment on matters that affect or concern its residents or businesses.

9. **Integration.** This Consent Agreement constitutes the sole agreement of the parties with respect to the subject matter thereof. The City and ComEd each warrant to the other that no considerations other than those stated in this Consent Agreement have been offered by either party or their agents and agree that, in any event, no other representations, agreements, conditions, terms, or considerations relating to the subject matter of this Consent Agreement shall be valid or binding upon them. The City understands and agrees that nothing herein waives or modifies ComEd's rates, tariffs, or general conditions of service. No amendment or modification to this Consent Agreement shall be valid unless it is made in writing and executed by the authorized representatives of the City and ComEd.

In witness whereof, the City of Darien and Commonwealth Edison Company have caused this Consent Agreement to be executed this 16th day of December 2005.

Commonwealth Edison Company

By: _____

Its: _____

City of Darien

By: Kathleen M. Weave

Its: Mayor

In witness whereof, the City of Darien and Commonwealth Edison Company have caused this Consent Agreement to be executed this ____ day of December 2005.

Commonwealth Edison Company

By: _____

Its: VP External Affairs &
Claims

City of Darien

By: _____

Its: